

QUESTIONS / CLARIFICATIONS FOR THE ICC TRIAL COMPETITION

Please find below the answers to some of the questions. Most questions were not answered for the reason that an answer would not be relevant to the case, would not shed further light on issues, would give away too much or is already apparent on the basis of the facts and procedural history, or can reasonably be inferred from the context. Especially it must be mentioned that when no information is given on a particular point –for example, whether there are proceedings initiated against Torzow in Hegia- that this information does not exist.

(Information added on 18 december 2008:) On an additional note, please pay attention to the following two remarks regarding your questions and the case:

The elements of the crimes should not be discussed separately in the memorial.

As there is sufficient ICC case law on the applicable (sub-)articles of JCE, we will leave this up to the teams to find out.

Team	Question
Nalsar University (India)	Did the Prosecution stop in Arista when Torzow was arrested by Arista and sent to court? A: This information is not available.
	Are the victims xx01-xx10 anonymous while participating in trial? A: yes
Universidad Nacional Autonoma de Mexico	Under which charges was the arrest warrant against Eric Torzow issued in Arista? A: This information is not available. The parties only have evidence that he was officially indicted for command responsibility for various war crimes and crimes against humanity committed in Kuna, on 1 January 2007.
	Was the humanitarian intervention lead by Eric Torzow?
	Are there any investigations or proceedings against Eric Torzow in Hegia?
	Where did the reports of paragraph 6 of the problem come from? A: From eye witnesses, interviewed by NGOs on the ground; relatively reliable sources.
	Is there any information within the reports provided in paragraph 6 about the perpetrators of the attack? A: No such information available.
	Is there any information on torture or mistreatment in the detention of Eric Torzow in Arista?
	Was there any arrest warrant issued in Arista before the detention of Eric Torzow? A: This information is not available.
	How long passed since the moment of the abduction of Torzow until the moment of his arrest by the authorities of Arista? A: very little time, less than one day.
	Is Hegia claiming jurisdiction over the case under article 19? A: No such information is available
	Is there any intention from the Prosecutor to initiate proceedings against Robert Barba?
	Is there any intention from the Prosecutor to initiate proceedings against the President of Hegia?

	<p>The confirmation hearing is only intended to address points A to E established in the agenda or it is also intended to confirm the charges against Torzow?</p> <p>A: Of course, the confirmation hearing serves the ultimate purpose of confirming the charges, but the agenda at this point is limited to the issues A-E before we move on – if at all.</p>
	<p>Was the humanitarian intervention supported by the United Nations or any other international organization?</p>
	<p>Who was in charge of the humanitarian intervention?</p>
	<p>Was the military operation in Kuna mandated to Eric Torzow part of the humanitarian intervention?</p>
	<p>Was Eric Torzow presented before the competent national authority in Arista when he was detained there?</p> <p>A: There is no information on this point.</p>
	<p>Did Eric Torzow claim any violation regarding his abduction during his first appearance before this Court?</p> <p>A: No.</p>
	<p>Did Eric Torzow claim anything before this Court regarding violations of his rights during the time he was detained in Arista?</p> <p>A: No.</p>
	<p>Was the official indictment from the Aristan authorities issued before the abduction and detention of Eric Torzow?</p> <p>A: The indictment was officially issued after the apprehension of Torzow. There is no information; however, whether before the indictment was issued there was a valid arrest warrant.</p>
	<p>Is the evidence in point E from the agenda supported by other evidence?</p>
	<p>Is the president the direct commander of the Hegian army?</p>
	<p>On which date did the Prosecutor initiate his proprio motu investigation?</p>
	<p>When did the armed conflict finish?</p>
	<p>Was Eric Torzow informed of the charges of the Aristan indictment against him during the time he was detained in Arista?</p> <p>A: There is no information on this point.</p>
	<p>Did Eric Torzow claim for any violation of his rights at any stage before the confirmation hearings?</p> <p>A: No.</p>
	<p>Were the statements of y14 and y21 included in the Prosecution's list of evidence?</p> <p>A: Yes</p>
	<p>Is there any other evidence on which either the Prosecutor or the Victims are willing to rely besides of that provided in the problem?</p> <p>A: Yes</p>
	<p>Where was Eric Torzow during the Kuna attack?</p> <p>A: There is no information on this.</p>
	<p>What were the specific functions and powers of General Eric Torzow as the leader of the Hegian Army?</p> <p>A: There is no information on this.</p>
	<p>What is the content of the witnesses' testimonies?</p>
	<p>Has Hegia initiated any investigations against Eric Torzow's army for Kuna attack?</p> <p>A: There is no information on this.</p>
	<p>Were there any actions to prevent or punish the responsible Hegian soldiers involved</p>

	in Kuna attack?
	Were there actions to prevent the conduct of the army in Kuna attack?
	Did the Prosecutor inform the Aristan and Hegian governments of the initiation of the investigation on the basis of article 18 (1)? A: Yes
	On which date did the Prosecutor notify the States Parties and those States which would normally exercise jurisdiction over the crimes of Kuna attack under art. 18.1?
	What are the functions of the Hegian President under its internal law?
	Was the village of Kuna within the region protected by the humanitarian intervention?
	Was Eric Torzow present during the Kuna attack? A: There is no information on this.
	Is there further evidence that support the statement that the arm forces “seemed beyond any control or reason?” A: The evidence was taken from eye witnesses, whose accounts were published in NGO reports.
	Did the proprio motu investigation of the Prosecutor initiate the same day he reported his intention to start it?
	Did Eric Torzow direct the humanitarian intervention?
	Is there any evidence that victims intend to submit in the same sense of the prosecution’s charges?
Moscow State University (Russia)	What time period had passed after the night arrest of Eric Torzow until the day he was taken into custody and when tried in Arista? Did he have an opportunity to exercise his right to counsel? A: First question already answered; second question, we have no information on this.
	Did any hostilities other than Kuna-incident take place in the territory of Northern Hegian region after December 25, 2006?
	Have the identities of protected victims been disclosed before the Defense? A: Already answered.
Bond University (Australia)	Concerning the Victims wishing to Participate: Who are the victims wishing to participate? What is their nationality? What has happened to them? Are the victims organizations or individuals? What evidence do the victims want to submit to the PTC? Have the victims submitted proof of identity issued by a recognized public authority?
	What is the role of victims counsel, particularly in Claims A, B&D? A: Role of victim counsel is to represent to the best of his/her ability victims.
	Concerning the 500 people killed in Kuna: Who were they? Aristan or Hegian? Are they civilians? A: yes
	What was destroyed by looting and arson in Kuna? Houses, schools, dwellings, transport? Military operations? A: this was an ordinary village with no lawful military targets.
	Was the Aristan’s attack on Hegian territory, or did all attacks occur within Arista?
	Is Torzow a national of Hegia or Arista?
	Has Hegia financed or trained the Hegian rebel forces? A: There is no information on this.
	How come the witness statement was taken 9 days before the investigation started? A: This is an error to be corrected. Both witness statements referred to sub E were

	taken on 1 March 2007.
	Who initiated the indictment of Eric Torzow in February 2007?
	What is the date of the indictment?
	Did Hegia request extradition of Torzow at any point?
	Are the witnesses anonymous? A: already answered.
	When the prosecution initiated <i>proprio motu</i> investigation, did they notify the relevant states? If so, did Arista take relevant steps under Article 18 (2)? A: First question, yes, second, there is no information on this.
	When Torzow was indicted and accused in Arista, did this involve a trial process? If not, any other court process in Arista?
	Is Arista prosecuting Torzow for Crimes Against Humanity, War Crimes and Command Responsibility? A: should read 'command responsibility for his subordinates suspected of having committed various war crimes and crimes against humanity'.
	Was there any mistreatment of Torzow by the unknown abductors in either the abduction or transport to Vorta? A: There is no information on this.
	Did witnesses y21 and y18 who gave statements (as per confirmation of charges agenda item 5) consent for these statements to be used in the [International Criminal] Court? A: There is no information on this.
University of Amsterdam (Netherlands)	Are the victims inhabitants of the Kuna village? A: Yes Were they present during the incident? (In other words are they directly concerned with the Kuna incident or are they victims in a broader sense?) A: There is no information on this
	What is the nationality of General Torzow? A: Hegian nationality.
	Has the Pre-Trial Chamber already asked the parties to make observations on the proper conduct of proceedings prior to the confirmation hearing?
	Did the Prosecutor notify Hegia and Arista of his decision to initiate investigations <i>proprio motu</i> under article 18(1) of the Statute? A: Already answered, yes.
	Has Hegia taken any steps to investigate or prosecute anyone for the events that took place in Kuna on 1 January 2007?
	Is the additional evidence the witnesses want to adduce exonerating or incriminating? What form does it take? Does it concern the guilt/innocence of the person or reparation? A: There is no information on this.
	Has the additional evidence been disclosed to the parties? A: No
	Are some of the victims minor? A: No
	Are the Aristan procedural laws regarding arrest in conformity with the standards set out in the ICC Statute (article 59 ICC Statute)?
	Is the evidence of witness y14 and y21 incriminating or exonerating?
	Did the deceased witness consent to his statements being used for the purposes of the

	confirmation proceedings?
	Are there any circumstances that may cast doubt on the reliability of the witness? (Was the witness a co-perpetrator, suspect, did the witness have family ties with General Torzow?) A: No information on this
	What is the cause of death of the witness? A: There is no information on this
	Is the statement given under oath?
	Has the Pre-Trial Chamber ordered the non-disclosure of the identity of the witness?
Minas Geraies (Brazil)	Has Gen. Eric Torzow been brought before a regular and previously established Court in the country of Arista? A: There is no information on this.
	What is the current situation of the legal institutions of the State of Arista? A: There is no information on this.
	When the crimes occurred, did the defendant comply with his duty to inform his superior?
	Does the indictee have a history of participation or commitment of crimes? Is he a recidivist?
	Was the Kuna massacre the last event of the armed conflict? When did the hostilities between the two countries end?
	Is the northern region of Arista under the control of any kind of <i>de facto</i> political institution established by Robert Barba's rebel army or is the territory occupied by the Hegian forces? A: There is no information on this.
	After the investigations, why was Robert Barba not formally accused by the prosecutor?
	Did the Rebel Army use any kind of element (uniform, signal, emblems) able to distinguish them from the Hegian forces?
	When did the Geneva Conventions and The Additional Protocols enter into force in Arista? A: Years before the Kuna incident took place.
China University on Political Science and Law	In Paragraph 6, the moot problem provides that "the troops seemed beyond any control or reason". Does that mean they acted simply without any attempt of control from the leader, or the leader took necessary measures to control, nevertheless failed? Can you provide some additional facts for assessment?
	With respect to the "military forces" mentioned in Paragraph 6 of the moot problem, are there any other military forces apart from the Hegian army, the Aristan army and the rebel forces?
	Are Kuna inhabitants civilians? Are they all of Aristan nationals?
	Paragraph 6 of the moot problem provides that the Prosecutor seeks confirmation: "on 1 January 2007 in Kuna Eric Torzow and Robert Barba with other persons jointly committed, as a joint criminal enterprise, within the meaning of article 25 (3)(a) of the Statute...". Does this provision exclude other forms of responsibility, such like commanders' responsibility within the meaning of Article 28?
	In paragraph 9, there is no indication about the precise time of the prosecution against Mr. Torzow conducted by the Aristan authority. Should there have been one? A: There is no information as to when he was precisely officially indicted, but it was relatively shortly after his arrest by the Aristan police.

	Still, in paragraph 9, the problem reads that “At night, when leaving a bar in a town in this region he was abducted by unknown individuals and taken to the Arista capital, Vorta. There he was arrested and taken into custody by the Aristan police.” Did the whole thing of abduction by unknown individuals and arrest by the Aristan police take place at one same night?
	Did the ICC Prosecutor inform the state parties after he got the authorization from the Pre-Trial Chamber according to article 19 (1) of the Rome Statute? A: Yes
	Does the letter “y” in “y21” and “y14” stand for “at the age of 21” “at the age of 14” etc.? A: No, these are random numbers.
	Where were the statements of the witnesses taken? Were they taken at the seat of the court?
	Did the Prosecutor inform the Pre-Trial Chamber, according to article 56 of the Statute OR rule 47 (2) of the Rules?
	Did both of the witnesses consent to the Prosecutor using their testimony as evidences at the confirmation hearing? A: There is no information on this.
	Did the Prosecutor take any measures such as radio, or radio tape when taking the statement?
	Are both of the statements submitted by the Prosecutor, or one of them by the Defense?
	What are the contents of these statements? Are they used for supporting the charges against Mr. Torzow? A: The statements are intended to be introduced as evidence in confirmation of the charges by the Prosecutor.
	Are the two witnesses in this problem core witnesses to this case?
	Did the Prosecutor take any measures when he or she was taking the testimony of witness y14? If so, what are they?
	Do issues A - E concern only the confirmation hearing?
	For the purpose of this competition, whether the issue of the jurisdiction of the Court concerns only the proposed charges? Should temporal jurisdiction and personal jurisdiction etc. not be discussed in the written memorials? A: Yes, focus on the ICC’s subject matter jurisdiction.
National Shevtchenko (Ukraine)	Is official indictment a part of investigation process in Arista in accordance with its internal law?
NLS, Bangalore (India)	Are victims xx01-xx10 participating in the proceedings in an anonymous capacity or have their identities been disclosed to the Defence? (As the problem only mentions that the witnesses are under protection and does not specify whether anonymity as a protective measure has been invoked).
Osgoode Hall Low School (Canada)	What does “additional evidence” include? (speaking from the victims’ counsel perspective) –Agenda issue C. A: In addition to evidence of which the prosecutor and defence informed the Pre-Trial Chamber they will rely on at the hearing.
Graz University (Austria)	Are the members of the Hegian minority in Arista citizens of Arista or Hegia?
	Have the names of the protected victims xx01- xx10 been disclosed to the defence or

	are they completely anonymous?
	<u>Clarification of the memorial structure with a view to the Procedure & Rules of the trial competition and the established agenda for the confirmation hearing: Should point A of the agenda, “A. In the light of the proposed charges, the jurisdiction of the Court”, be solely dealt with under “(i) Jurisdiction of the court” (as listed under point C of the Procedure & Rules of the competition), or under (i) and “(j) Written arguments”?</u>
London School of Economics (UK)	Are the ‘various war crimes’ General Torzow has been accused of by Arista, the same crimes on the same facts as those he is indicted for by the ICC? A: Torzow has not been indicted by the ICC; there is only the application for an arrest warrant in para. 12, which sets out the factual and legal scope of the suspicion.
	Is the victim’s application process over?
	What’s the role of the Victim’s Counsel during proceedings? A: To represent to his/her best ability the interests of victims.
	Is there any contention at a State level whether the northern Hegian region is an autonomous region?
	Did Arista voluntarily give up Torzow to the ICC?
	What is the nature of the additional evidence? A: There is no information on this.
	Was the abduction illegal under Arista’s national law? And can we assume that there is Aristan State involvement in Torzow’s abduction?
	Is there any evidence that Torzow did not have effective control of his troops in Kuna?
Pretoria University (South Africa)	Will the victims and witnesses remain anonymous to the public only or will they remain anonymous to the the accused and the defence counsel also?
	In which country is the city of Kuna situated? A: In Arista, but on the border between the Northern part with predominantly ethnic Hegians (but still of Aristan nationality) and the other parts of Arista.
	Which people predominantly lives in the city of Kuna (which ethnicity)? A: Predominantly people of Aristan ethnicity.
	What nationality and ethnicity are the victims?
	What is the nature of the evidence that the victims wish to adduce? (i.e. will the evidence help the prosecution OR is the evidence of a nature which sets out the extent of the injuries of the victims which would allow them to claim compensation?) A: The evidence is potentially broad in scope, aimed at assisting the PTC in deciding on questions of fact.
Tsinghua University (China)	When did the events, mentioned in Para 5, namely "This joint attack managed to...Arista", happen? Between 25 th of Nov 2006 and 1 st of Jan 2007, or they happened during the whole conflicts? A: It started on 25 December and lasted a couple of days to a week.
	Some of the information in Para 6 on the Kuna incidents was provided by reports and media, what are the sources of these information? Was the sentence "They killed practically all inhabitants –estimated at 500 persons" a part of the report?
	Regarding the looting and arson in the Kuna incidents as provided in Para 6, were they aimed at public or private objects? Were those objects portable?
	There was little information in the facts on how Hegia reacted on Eric's arrest, what is the government's attitude on this issue?
	We would like to know if the committee can provide us with more information on the status of Hegia's municipal law, regarding war crimes and crimes against humanity.

	<p>In para 17, it mentions "there have been many filings between the parties", we would like to know if these filings were between only two parties or between three parties (prosecutor, defense council and victim). A: Correct, it must read between the different parties.</p>
Utrecht University (Netherlands)	<p>What is Eric Torzow's nationality?</p>
	<p>What is the relationship between Torzow and Barba and/or where is Barba now?</p>
	<p>What is the ethnicity of the victims of the incident in Kuna?</p>
	<p>What is Torzow's formal mandate?</p>
	<p>Please clarify the meaning of 'Each blamed the other side for the operation' in paragraph 8 of the Case Facts.</p>
	<p>What aspects of the Rome Statute, if any, has Arista incorporated in its domestic legal system since its ratification of the Statute? A: There is no information on this.</p>
	<p>Is Arista a monist or a dualist State? And Hegia?</p>
	<p>When did Hegia sign the Rome Statute? A: 15 February 2006</p>
	<p>Has Hegia indicated willingness or unwillingness to ratify the Rome Statute?</p>
	<p>Are any related (to the ICC charges) crimes covered by Hegian domestic legislation?</p>
	<p>What are the reasons for the lack of an arrest warrant against Barba?</p>
	<p>Is the time frame correct in placing the Prosecutor's application for an arrest warrant to the PTC on 15 March 2007, whilst the authorisation of the PTC for a proprio motu investigation was on the 20 February 2007? A: yes, this was a very expeditious investigation.</p>
	<p>Are we to consider the date of the confirmation hearing to be the calendar date of the competition (i.e. February 2009)? A: yes.</p>
	<p>Was there any communication made by Arista accompanying the surrender of Torzow? A: There is no information on this.</p>
	<p>In dealing with the question on jurisdiction, are we to discuss the elements of crimes?</p>
	<p>What type of evidence is VC seeking to adduce at the confirmation hearing? Please clarify its content and origin. Is any of this evidence originating from xx04? A: Not only, the evidence originates from other victims as well.</p>
	<p>What type of witnesses (e.g. eye witnesses) are those referred to under E? Please clarify the content of their statements.</p>
	<p>Has H requested the return of its national + willingness to investigate or prosecute the conduct?</p>
	<p>Can any link be found between the abductors and the state of Arista?</p>
	<p>Is the Hegian part of A still to be considered part of Arista or has the territory seceded from Arista?</p>
	<p>Does Hegia have the necessary legislation in place to bring proceedings against a suspect for war crimes or crimes against humanity?</p>
	<p>Does an extradition treaty exist between Arista and Hegia – if so has a request been made for extradition?</p>
	<p>Is there any evidence of maltreatment of the accused - from minor harm to serious issues such as torture?</p>

	Can the accused lawfully be held under indictment in A for the 51 / 50 days before he is surrendered to the ICC? Does this contravene any domestic legislation giving rise to a local remedy?
	Did the accused have the ability to challenge his detention between dates of indictment and surrender to ICC?
	Was the arrest of the accused in A lawfully performed; according to the laws of A can someone who is the victim of unlawful detention (abduction) be legally arrested as a result? A: There is no information on this.
	Has the prosecutor adhered to the rules in Article 18 ICC to inform the states who would normally exercise jurisdiction?
	Was the procedure under Article 59, for an arrest in a custodial state, followed?
	Has the defendant applied for interim release (at the ICC)? If he has been denied such interim release what reasons were given?
	Has Hegia, in any way, expressed acceptance or consent to the surrender of the suspect?
US Teams	Is the village of Kuna on the border of Hegia and Arista, or on the border of the Hegian region of Arista, and the rest of Arista?
	Can you confirm that the charge is supposed to be JCE under 25(3)(a) rather than under 25(3)(d)? If the former, may the prosecutor interpret the charge to be one of "jointly committing" under 25(3)(a), rather than one that incorporates the full ICTY definition of JCE? If we are to incorporate the full ICTY definition of JCE, is there any clarity as to which prong Torzow is charged with?
	The way the facts are written it appears that you would like us to assume that the atrocities at Kuna were perpetrated by Hegian or rebel troops (though there is ambiguity as to which troops on the Hegian/rebel side participated). Is it safe to say that the evidence before the Court substantiates this view and effectively rules out the theory that Aristan forces might have perpetrated the attack?
	The facts do not mention any contact between the Defense and any of the witnesses. Are we to assume that the Defense has had no opportunity to question witness y21? A: Yes. Also, are we to assume that victims are anonymous given that we only get their numbers? Or is there scope to argue that they are non anonymous? A: Yes, the victims are anonymous.
	Can you clarify precisely the crimes for which Torzow was indicted under command responsibility in the Aristan courts?
	Relatedly, could you also clarify the current status of Torzow's (presumably) pending prosecution in the Aristan courts? A: There is no information on this.
	Can a map be provided to show the precise geographic interaction between Hegia, Arista, the border region, and the location of Kuna? A: No.